IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.8335/2007.

Suresh Mishra

Vs.

Jaipur Nagar Nigam and anr.

Date of Order:- 28/11/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Ashvin Garg for the petitioner.
Shri Mahendra Goyal for the respondents.

****

The petitioner has challenged the order passed by the Additional District Judge No.1, Jaipur City, Jaipur dated 6/9/2007 whereby the appeal filed by respondent No.2 was allowed and the order dated 20/8/2007 passed by Civil Judge (Jr.Div.) No.4, Jaipur City, Jaipur whereby status-quo order was passed was quashed and the petitioner, the Jaipur Nagar Nigam was directed not to put any obstruction in the construction so raised by respondent No.2.

Learned counsel for the petitioner argued that in the suit filed by the petitioner, already there was an injunction against the respondents that during the

pendency of the aforesaid suit, respondents shall not raise any further construction except in accordance with the rules and the bye-laws. It was argued that the aforesaid order having not been challenged, hence it has attained its finality and it would not be open for the respondents to file a fresh suit to the same effect. It was argued that the learned court below erred in law in interfering with the order passed by the first court dated 20/8/2007 whereby, the respondents were directed to maintain status-quo.

Learned counsel for the respondents however has opposed the writ petition and argued that petitioner has raised construction on his plot violating the building bye-laws.

On perusal of the impugned-order, I find that in the injunction suit filed by the petitioner, the direction was only to the effect that the respondents shall not go ahead such further construction which would be in violation of the building bye-laws. Similar nature of direction was issued by the appellate court while passing the impugned order dated 6/9/2007 wherein, the respondents has been made

required not to raise any such construction. It was directed that plaintiff shall not raise any such construction on the basis of the deemed construction which would be in violation of the bye-laws and shall not demolish such construction of the plaintiff which was found raised on the basis of the deemed permission and in accordance with the bye-laws. Now the petitioner has come before this Court by way of this writ petition with the prayer that he may be permitted to raise construction.

Upon consideration of the arguments and material on record, I do not find any error in the order passed by the learned Additional District Judge No.1, Jaipur City, Jaipur more particularly when I find this order in conformity with the earlier directions given by the learned Additional District Judge No.4, Jaipur City, Jaipur itself in the suit filed by the petitioner. On perusal of the injunction orders, it reveals that both the parties have filed two suits of similar nature for the similar property in dispute.

I therefore do not find any reason to interfere with the order of the appellate court

i.e. learned Additional District Judge No.1, Jaipur City, Jaipur dated 6/9/2007.

However, in the interest of justice, I direct the parties to move the trial court for consolidation of both the suits and for expediting the trial thereof. It is however clarified that the aforesaid injunction order passed in appeal of the respondents by the learned appellate court would be applicable to the house of the plaintiff-respondent alone.

(MOHAMMAD RAFIQ), J.

anil